In the High Court of Judicature at Madras

Dated: 20.03.2007

Coram:

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N. PAUL VASANTHAKUMAR

Writ Appeal No.3187 of 2002

1.R.Perumayee Ammal(deceased)
W/o Ramasamy Pillai
2.R.Balasubramni
3.B.Sivaramakrishnan
4.Muthukrishnan
5.B.Gomathi
(Appellants 2 to 5, who are legal heirs
of the deceased first appellant, brought
on record by an order dt.20.03.2007
made in WAMP No.91/2007 by PSJ&NPVJ) .. Appellants/Petitioner

Vs.

1.The District collector,
Dindigul.

2.The President,
Chettynaickenpatti Panchayat,
Dindigul. .. Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 01.10.2002 made in W.P.No.37187 of 2002. Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari to cal for the records of the first respondent pertaining to Na. Ka. No. 3822/2002/A3 dated 27/7/2002 and to quash the same.

For Appellant : Mr.R.Muthukumarasamy, SC., for
Ms.Selvi George
For 1st Respondent : Mr.P.Subramanian, G.A.,
For 2nd respondent : Mr.V.Raghupathy

JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM,J.)

Aggrieved by the order of the learned single Judge dated 01.10.2002 made in W.P.No.37187 of 2002 dismissing the writ petition, the writ petitioner has filed the above writ appeal.

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2. For convenience, we shall refer the parties as arrayed in the writ petition.

3. According to the petitioner, she is the owner of the plot in S.No.604/2, Chettinaickenpatty, Dindigul District, and she got patta, Chitta etc for the said lands. Since the land is unfit for cultivation, in order to develop the same, she made levelling, fencing, stone laying etc. Thereafter, for converting the land into plots, she submitted a plan for approval of layout to the second respondent as per the rules which are in force. The second respondent, after scrutiny of her application, approved her land for converting into 33 plots by proceedings in R.Dis.No.2 of 2002 dated 18.06.2002.

4. It is further stated that while applying for approval, she made arrangements for approach road for connection to the Highways, play grounds etc as per the rules. After the approval granted by the second respondent, the petitioner had sold 9 plots by executing registered sale deed in favour of the purchasers. In the mean while, the first respondent herein, District Collector, Dindigul, passed an order in his proceedings dated 27.07.2002, whereby he suo motu cancelled the order passed by the second respondent and also restrained the second respondent from issuing a no objection certificate mentioning certain reasons. According to the petitioner, she made necessary arrangements as required under the rules. She executed a Gift Deed gifting 10% of the sanctioned land to the second respondent as early as on 10.06.2002 and 12.08.2002 and the same has been accepted by the president, Chettinaickenpatti Panchayat, Dindigul, the second respondent. After the order of the District collector, the petitioner complied with the defects pointed out by the District Collector by paying a sum of Rs.40,000/- towards the costs of providing street light and also provided required space for road. The said compliance has been reported by the Block Development Officer to the Assistant Director (Panchayat) Dindigul and this was brought to the notice of the District Collector. Having no other remedy, the petitioner has filed the said writ petition.

5. The learned single Judge, by an order dated 01.10.2002, even at the admission stage, after pointing out that in the absence of prior concurrence of the Director of Town and Country Planning or his authorised officer held that the order of the District Collector cannot be interfered with, confirmed the order of the District Collector and dismissed her writ petition. Questioning the said order, the petitioner has filed the present appeal.

6. Heard the learned Senior Counsel for the appellant as well as the respondents.

7. Mr.R.Muthukumarasamy, learned Senior Counsel appearing for the appellant, at the foremost, pointed out that the petitioner has complied with all the conditions and it is for the second

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respondent-Panchayat to get approval from the Director of Town and Country Planning. In any event, according to him, the District Collector, ought to have issued notice or afforded an opportunity of being heard before passing the proceedings dated 27.07.2002 in terms of Section 202(2) of the Tamil Nadu Panchayats Act, 1`994.

8. On the other hand, Mr.P.Subramanian, learned Government Advocate appearing for the first respondent, and Mr.V.Raghupathy, learned counsel appearing for the Panchayat-second respondent, have contended that, in the absence of prior approval by the competent authority viz., Director of Town and Country Planning, the order of the District Collector cannot be faulted with and supported the order of the learned single Judge in dismissing the writ petition.

9. We have carefully considered the rival contentions and perused the relevant materials.

10. It is not in dispute that the petitioner submitted a plan to the second respondent for approval of lay out to convert her land in S.No.604/2, Chettynaickenpatty into plots. Pursuant to the same, according to the petitioner, the second respondent, after scrutiny of her application and satisfying himself, granted approval for converting the land into 33 plots in his proceedings dated 18.06.2002. In the impugned proceedings the District Collector by pointing out that there are objections restrained the petitioner from selling the plots to third parties. The first objection of the District Collector is with regard to prior approval by the Director of Town and Country Planning. It is true that Rule 3(1) of the Tamil Nadu Panchayats Building Rules, 1997, mandates prior concurrence of the Director of Town and Country Planning before approving a lay out plan. A reading of the above provision makes it clear that on the application of the person concerned or owner of the land, it is the duty of the Executive Authority viz., the President of the Village Panchayat, to get prior concurrence of the Director of Town and Country Planning or authorised Joint Director or Deputy Director of Town and Country Planning. It is true that, in the case on hand, the second respondent, before approving the application of the petitioner, has not obtained the concurrence of the said authority. The next ground which finds place in the order of the District Collector is with regard to non compliance of certain conditions viz., providing basic facilities such as sewerage line, laying road etc. The learned Senior Counsel for the petitioner brought to our notice that all the conditions prescribed in the proceedings of the second respondent have been fully complied with.

11. In addition to the same, he points out that though the Inspector (District Collector) is empowered to suspend or cancel resolution or order etc under the Tamil Nadu Panchayats Act, 1994, Sub Section 2 of 202 makes it clear that before taking action on any of the grounds referred to in Clause (a) and (b) of

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Section 201 (1) an opportunity should be given for explanation. The relevant clause reads as under.

> "The Inspector shall, before taking action on any of the grounds referred to in clauses (a) and (b) of sub-section (1), give the authority or person concerned an opportunity for explanation."

12. A reading of the above provision makes it clear that though the Inspector is empowered to suspend or cancel or prohibit any resolution or order, it is incumbent on his part to provide an opportunity to the person concerned to explain his or her case. As stated earlier, it is the specific case of the petitioner that she fulfilled all the conditions prescribed in the proceedings of the second respondent. Likewise, it is pointed out that it is for the second respondent to obtain prior approval of the Director, Town and Country Planning or his nominee. In such circumstances, as rightly pointed out, had the writ petitioner been afforded an opportunity, it would have been possible for her to point out/place all the relevant materials, since there was failure to provide an opportunity to the petitioner, we are of the view that the said aspect vitiates the ultimate order passed by the first respondent. Unfortunately, though the said objection was raised before the learned single Judge, the same was not considered. In the light of the said infirmity, we are not inclined to go into the merits of the claim made by the petitioner with regard to compliance of the conditions imposed in the proceedings of the second respondent. Accordingly, we set aside the order of the first respondent dated 27.7.2002 and the order of the single Judge dated 1.10.2002 made in W.P.Nos.32526 and 37187 of 2002 and remit the matter to the second respondent. It is for the second respondent to get prior concurrence of the Director of Town and Country Planning or his authorised Joint Director or Deputy Director of Town and Country Planning with reference to the application of the petitioner for lay out plan. The second respondent is directed to initiate appropriate proceedings as mentioned above within a period of four weeks from the date of receipt of a copy of this order to the authority concerned.

13. The writ appeal is allowed on the above terms. No costs.
Raa

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The District collector,
Dindigul.

2.The President,
Chettynaickenpatti Panchayat,
Dindigul.

+ one cc to Ms. SelviGeorge, Advocate sr no. 17478
+ one cc to the Government Pleder sr no. 17143

nsm(co)
nm(23.03.07)

W.A. No.3187 of 2002

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